

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 533 of 1996

AND

SPECIAL CRIMINAL APPLICATION NO 611 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJENDRA J DAMANI

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI, MR SV RAJU & MR GH BHATT for Petitioner
MR AG URAIZEE, LD. APP for Respondent No. 1
MR KAMAL TRIVEDI for M/S TRIVEDI & GUPTA for Respondent
No.2,
MR MAULIN R RAVAL with MR MR ANAND, LD. PP.for Respondent
Nos. 3 and 4.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 26/07/96

ORAL JUDGEMENT

In both these petitions under Article 226 of the Constitution of India the petitioner has prayed for quashing and setting aside respectively the complaint Criminal Case No. Sec. G(DD) C/No. 544 dtd.

12/12/1995 G.R./3072/95 and Sec. K(DD) C/No. 265 dtd. 26/10/1995 G.R.-2683/95 u/Ss. 420, 467, 468 and 471 of the Indian Penal Code (for short 'IPC'), which were filed in the concerned Court of Chief Metropolitan Magistrate at Calcutta in connection with the agreement alleged to have been forged/fabricated in the city of Ahmedabad, which agreement would read as under :-

'This Agreement entered into between M/s. Plywood and Timber Products Agencies, Zone 3/21, Sardar Patel Municipal Timber Market, Behind Gitamandir Lati Bazar, Ahm,edabad, hereinafter referred to as 'first party' and Mr. Rajendra Jivanlal Damani (hereinafter referred to as 'second party').

The first party is also having and doing works for other firms known as 1. Sharda Plywood Industries Ltd., 2. Plywood and Allied Products, 3. Vidarbha Vineer Ind. Ltd., 4. Jolly Board Ltd., 5. Jenny Plywood Industries Ltd., Second party is working with the first party and being paid Rs. 1500/p.m. salary and is also being paid Rs.250/- as increments every year from the date of appointment.

The Second party is working as an Accountant and looking after the account works of the first party and its other firms are limited only for Ahmedabad transactions.

It is agreed between the parties that second party who is looking after the Account works of the other firms and company will be paid Rs.700/- from each firms for whom he is working every month above his regular salary and first party will pay this amount of Rs.700/- for the firm he has worked above as regular salary.

It is agreed by the first party that second party will also get two months salary by way of bonus, one month salary by way of leave encashment, Rs.500/- every month by way of conveyance allowances and medical reimbursement on actual paid above his regular salary.

It is agreed by the first party that the first party will pay to the second party Rs. 10,000/per collection of every 10.0 lacs rupees and their proportion for non-billing cash transactions accounts of parties on every firm by

way of adhoc allowances.

This Agreement will be binding on the first party and its successors.

The parties have arrived at this Agreement, after understanding the terms of the Agreement and with their full knowledge and in witness whereof the parties have signed this agreement on 20th day of August, 1987.'

It is the case of the petitioner in both these petitions that because of delayed and irregular payments to the petitioner from the employer M/s. Plywood and Timber Products Agency, Ahmedabad in accordance with the aforesaid agreement the relation between the petitioner and the said employer as well as its power of attorney Shri J.B. Pachhesia had been strained. This resulted in issuance of the order of the transfer of the petitioner from Ahmedabad to Calcutta. The petitioner was, therefore, required to file Civil Suit No. 2991 of 1991 in the City Civil Court at Ahmedabad bringing under challenge the legality and validity of the said transfer order. As the interim relief was granted ex-parte and subsequently vacated in the said suit, the petitioner had to move Appeal From Order No. 199 of 1992 alongwith Civil Application No. 1494 of 1992 before this Court, which granted interim stay against the transfer. Being displeased with the legal action of the petitioner as aforesaid, the employer discontinued to make payments of regular salaries to the petitioner and thereby attempted to place the petitioner and his family in the economic crisis. The petitioner was, therefore, required to move Civil Applications Nos. 3803/1992 and 1325/1993 in the above referred Civil Application No. 1494 of 1992 in Appeal From Order No. 199 of 1992. This Court directed the employer to make payment of the salaries to the petitioner regularly.

It is further the case of the petitioner that as aforesaid the employer had given a two wheeler Bajaj Scooter bearing No. GJ-1B-8361 belonging to M/s. Sharda Plywood Industries Ltd. However, Jamnadas B. Pachhesia, the power of attorney of the said Sharda Plywood Industries filed Criminal Enquiry Case No. 150 of 1991 before the learned Metropolitan Magistrate, Ahmedabad u/SS. 406, 408 and 420 of the IPC. The concerned police officer of the Kagdapith Police Station has taken physical custody of the aforesaid scooter pursuant to the proceedings in the said Criminal Inquiry Case. The learned Metropolitan Magistrate, Ahmedabad by his order dated 18/11/1991 rejected the prayer for interim custody

of the said scooter on the complaint of Sharda Plywood Industries Limited, with the result that the order was challenged in Criminal Revision Application No. 315 of 1991 before the City Civil and Sessions Court at Ahmedabad. In that Revision Application the petitioner's employer M/s. Plywood and Timber Products Agency, Ahmedabad was joined as the opponent for the first time after lapse of a considerable period. The learned Judge of the Sessions Court by his order dated 31/3/1992 granted interim custody of the said scooter to the original complainant M/s. Sharda Plywood Industries Limited, with the result that the petitioner has preferred Special Criminal Application No. 814 of 1992 before this Court and by way of interim relief the petitioner was granted interim custody of the scooter on 25/5/1992. However, the said Special Criminal Application No. 814 of 1992 was dismissed for default on 1/10/1992. M/s. Sharda Plywood Industries Limited, therefore, obtained actual physical custody of the scooter from the Kagdapith Police Station in October/November 1992. The petitioner has, therefore, preferred Misc. Criminal Application No. 486 of 1992 for the purpose of restoration of Special Criminal Application No. 814 of 1992 in December 1992. The said Special Criminal Application was restored to file and thereafter again rejected by order dated 5/10/1995.

The petitioner has filed Misc. Criminal Application No. 4966 of 1994 for quashing the process issued in the above referred Inquiry Case No. 151 of 1991. As the petition has been admitted by this Court interim relief granted therein has been continued till the disposal of the petition.

It is further the case of the petitioner that he was required to move an application to the Maninagar Police Station for police protection against criminal intimidation and threat received by him from the aforesaid Shri J.B. Pachhesia and Shri B.H. Baheti, who happened to be the Manager of the Plywood and Timber Products Agency, Ahmedabad. After inquiry the police filed Chapter Case No. 120 of 1991 u/S. 107 of the Code of Criminal Procedure, 1973 (II of 1974) ('Code' for short). Thereafter the petitioner had an occasion to file M. Case No. 57 of 1993 on 7/5/1993 before the learned Metropolitan Magistrate. The same was subsequently numbered as Criminal Case No. 35 of 1993 u/Ss. 341, 323, 294, 423, 506(2) and 114 of the IPC against the petitioner's employer and its power of attorney aforesaid Shri J.B. Pachhesia and its Branch Manager Shri B.H. Baheti. The learned Magistrate

ordered inquiry u/S. 156(3) of the Code and the accused there were arrested and released on bail in these proceedings. Afterwards a charge-sheet has been filed against the aforesaid Mr. Baheti and the case is renumbered as Criminal Case No. 3501 of 1993, now pending in the Court of the learned Metropolitan Magistrate, Court no.4, Ahmedabad.

It is further the say of the petitioner that the petitioner was required to file, on the strength of the aforesaid agreement, applications for recovery of his legitimate dues in the Labour Courts at Ahmedabad against the above referred concerns being Recovery Case No. 1699 of 1991, 1701 of 1991, 1702 of 1991 and 1718 of 1991 respectively against M/s. Plywood and Allied Products, Madhya Bharat Papers Limited, Sharda Plywood Industries Limited, Vidarbha Vinear Industries and the said applications are still pending.

It is next submitted by the petitioner that his employer Plywood and Timber Products Agency, Ahmedabad issued a notice to show cause on 8/5/1993 for the purpose of holding departmental inquiry and alongwith the same the petitioner has been placed under suspension. The petitioner has, therefore, on 13/5/1993 preferred Civil Suit No., 2338 of 1993 in the City Civil Court at Ahmedabad against the said notice and order of suspension. However, the petitioner could not succeed to secure the interim relief against the suspension. In the meantime the employer has issued charge-sheet dated 11/5/1993 to which the petitioner gave reply dated 15/5/1993. The petitioner has thereafter, filed Civil Suit No. 4072 of 1993 on 12/8/1993 with Notice of Motion No. 2472 in the City Civil Court at Ahmedabad and in that proceeding the said Court granted interim stay of departmental proceedings on 16/8/1993. The petitioner's aforesaid employer thereafter addressed letter dated 6/9/1993 intimating the petitioner that he would not be entitled to receive any amount of subsistence allowance during the pendency of inquiry as the departmental inquiry has been prolonged only at the instance of the petitioner. Thereafter, a learned Judge of the City Civil Court heard the matter and vacated interim stay against departmental inquiry on 2/12/1994. The petitioner's aforesaid employer thereafter conducted ex-parte departmental inquiry against the petitioner and terminated his services as per order dated 31/1/1995. Such order of termination was produced in the proceedings before this Court in April 1995 when the petitioner came to know about passing of ex-parte order of termination against him. It is also submitted by the petitioner that

Appeals From Order Nos. 20 and 31 of 1995 preferred by the petitioner against suspension and departmental inquiry filed before this Court became infructuous on account of the termination order as aforesaid. The petitioner has then asserted that for recovery of bonus and leave encashment amounting to Rs.10,000/- and odd he filed Summary Suit No. 2485 of 1994 against the aforesaid employer in the City Civil Court at Ahmedabad. The said suit was decreed on 28/10/1994 resulting into petitioner filing execution application no. 859 of 1994 wherein the employer deposited Rs.12,986.60 paise on 21/12/1994 in the said Court. The said employer, however, preferred Civil Misc. Application No. 862 of 1994 and 863 of 1994 for setting aside the aforesaid decree and for restoring the Summary Suit to file. The petitioner is, therefore, restrained from withdrawing the deposited amount. The petitioner has thereafter preferred Civil Revision Application Nos. 176 of 1995 and 177 of 1995 before this Court against the order dated 23/2/1994 restraining the petitioner from withdrawing the amount. This Court directed the trial Court on 23/3/1995 to decide within three months the aforesaid Civil Misc. Applications Nos. 862 and 863 of 1994. Pursuant thereto the trial Court by order dated 29/12/1995 rejected the aforesaid Civil Misc. Applications and vacated the interim relief. The employer, therefore, filed Appeals from Order Nos. 51 and 53 of 1996 in January 1996 before this Court. The same were disposed of by order dated 27/2/1996 directing to hear the Summary Suit No. 2485 of 1994 afresh on merits and the petitioner was permitted to withdraw the entire amount with a condition that he would have to refund it in case he does not succeed in the suit.

On 10/10/1994 the petitioner filed Summary Suit No. 3987 of 1994 against the aforesaid employer in the City Civil Court at Ahmedabad for recovery of increments and arrears thereof at the rate of Rs.250/- per annum. In that suit production of documents was allowed on 3/8/1995. The above quoted agreement was produced by the petitioner on 13/7/1995 and the trial Court allowed the production of the documents. However, it granted unconditional leave to defend to the employer. In that suit an application for amendment was preferred by the petitioner on 9/8/1995 and the same was granted on 26/9/1995 as per order below exh. 32 (Chamber summons proceedings) in the said suit.

In the background of the aforesaid facts, the petitioner has asserted that the respondent no.2 M/s. Vidarbha Venear Industries Limited in the second petition and M/s. Sharda Plywood Industries Limited in the first

petition filed aforesaid complaints in the Court of the learned Chief Metropolitan Magistrate at Calcutta. The learned Magistrate referred the matter to the Deputy Commissioner, Detective Department, Calcutta for investigation u/S. 156(3) of the Code treating the said complaints as FIRs and directing to submit the report by the date prescribed under the respective orders.

On 27/1/1996 between 22.05 to 22.35 hours the Police officer S.I. Fraud Section Shri Dudhendhu Chakravarty of Calcutta Police made search and seizure at the residence of the petitioner at Ahmedabad for recovery of original document (above quoted agreement). It is the case of the petitioner that as the original document had never remained with the petitioner, it could not be found out from the petitioner's residence. However, attested xerox copy of the said agreement was recovered and seized. The petitioner was taken to Amraiwadi Police Station at 23.30 hours on 27/1/1996 and kept in custody.

On 28/1/1996 the petitioner was produced before the learned Metropolitan Magistrate, Ahmedabad at 12.00 noon and the aforesaid Police Officer requested to grant transit p.c. upto 2/2/1996 with a view to take the petitioner to Calcutta. The request was granted upto 31/1/1996. Although the police officer came with an open railway ticket of Howra Express from Ahmedabad to Calcutta, the petitioner was taken to delhi by Ashram Express and from Delhi to Calcutta by Air flight as particularised in para. 3.18 of the petition. He was thereafter, produced before the learned Chief Metropolitan Magistrate at Calcutta on 30/1/1996. The petitioner moved a bail application, but the same was rejected and the petitioner was remanded to police custody till 8/2/1996. The petitioner's learned advocate moved an application on 1/2/1996 to the said Court to permit the said lawyer to approach the accused (the petitioner) for receiving necessary instructions. However, the application was rejected.

Again on 8/2/1996 the petitioner preferred application for bail and the same was rejected and the petitioner was taken into judicial custody till 22/2/1996. On 11/2/1996 the petitioner preferred bail application before the learned City Sessions Judge, Calcutta, who was pleased to grant bail to the petitioner on 13/2/1996. The petitioner was actually released from judicial custody on 14/2/1996. He also remained in Calcutta and presented himself before the learned Chief Metropolitan Magistrate on 22/2/1996 in the aforesaid criminal case. It is in the back-drop of the aforesaid

facts alleged in the petitions that the petitioner has prayed for quashing of the aforesaid criminal proceedings pending against him at Calcutta.

The petitioner has challenged the aforesaid criminal proceedings on the ground that even on the averments made in the complaints the Calcutta Court lacked territorial jurisdiction as it has not been mentioned anywhere in the complaint that the offence had taken place even remotely at Calcutta. Even the agreement in respect of which the complaints have been filed has been produced in the proceedings of the civil suit as detailed hereinabove. The petitioner has also challenged the aforesaid proceedings before the Calcutta Court on the ground that it is only the Court which is competent to file the complaint could do so and such Court is City Civil Court at Ahmedabad in view of the fact that the agreement came to be produced in the aforesaid suit filed in that Court. No private party would be entitled to file such criminal cases in view of the provision contained in sec. 195 of the Code. Reference has been made to a number of decisions in support of both the grounds of attack against the impugned proceedings.

It has been submitted on behalf of the petitioner that by virtue of the provisions contained in sec. 177 of the Code every offence is inquired into and tried by a Court within whose local jurisdiction it was committed and by virtue of sec. 178 of the Code when the place of inquiry or trial is uncertain it could be inquired into or tried by a Court having jurisdiction over any of the local areas where it is partly committed. It is submitted that as the above quoted agreement was executed in the city of Ahmedabad within the State of Gujarat and as the same was produced in the City Civil Court at Ahmedabad, it could not be said that any part of cause of action had arisen at Calcutta. Besides even on the averments made in the complaints sought to be quashed, it could not be said that any part of cause of action has arisen at Calcutta., It is, therefore, submitted that not only the complaint proceedings at Calcutta are illegal and void, but the order passed and the investigation carried out pursuant to such orders would also be void. It is submitted on behalf of the petitioner that the petitioner would be required to attend the Calcutta Court as also the police authorities at Calcutta inspite of the fact that they would have no authority or jurisdiction in respect of the aforesaid criminal proceedings and thus the petitioner would be required to attend to the aforesaid proceedings without due process of law. Hence, the petitioner has

also complained of violation of Article 21 of the Constitution of India. Based on these grounds of attack against the aforesaid criminal proceedings a reference has been made to a number of decisions in support of the submissions that the proceedings at Calcutta are outside the jurisdiction, that they could not have been initiated by virtue of the provision of sec. 195 of the Code and that, therefore, the petitioner could bring challenge to the same before this Court. These decisions may be noted in brief:

Board of Trustees, Calcutta Port v/s. Bombay Flour Mills Pvt. Ltd. reported in AIR 1995 S.C. 577 deals with territorial jurisdiction u/S. 20 of the Civil Procedure Code (5 of 1908). Reliance has been placed on para. 4 of the citation in support of the submission that the order passed by the learned Chief Metropolitan Magistrate of Calcutta is without jurisdiction and, therefore nullity. In Re Peppayya Swami reported in AIR 1949 Madras p. 833 a learned Single Judge of the Madras High Court was required to deal with question of jurisdiction of the criminal Court in respect of the offence of using forged document as genuine. The Court said that the offence could be said to have been committed at the place where such user had taken place and not at the place where such document was posted. This also pertained to the local jurisdiction of the concerned Magistrate in view of the offence of forgery.

In Oil & Natural Gas Commission v. Utpal Kumar Basu reported in (1994) 4 SCC 711 the words 'cause of action' appearing in Art. 226(2) of the Constitution of India were under consideration and the Apex Court held that since averments in the petition did not disclose that even a part of cause of action arose within the territorial jurisdiction of the Court, it had no jurisdiction to entertain the writ petition of the petitioner. The Apex Court held that the practice of the High Court of entertaining petitions merely because petitioner resides within its territorial jurisdiction would not be proper one. The question, therefore, is not one of jurisdiction of the lower Court or the authority acting under the directions of the lower Court in other State, but the question there was one of jurisdiction of the very High Court under Article 226 of the Constitution of India. Decisions in Gopalkrishnan Menon v/s. D. Raja Reddy, reported in AIR 1983 SC 1053, Surjit Singh v/s. Balbir Singh reported in AIR 1996 SC 1592, Harban Singh v/s. State of Punjab reported in AIR 1987 Punjab & Haryana p. 19, Legal Remembrancer, Government of West Bengal v/s. Haridas reported in AIR 1976 SC 2225, and

Sardul Singh v/s. State of Haryana reported in 1992 Criminal Law Journal p.354 are all the cases considering the scope of section 195 of the Code.

For exerting writ jurisdiction for violation of Art. 21 read with Art. 14, reference has been made to Maneka Gandhi v. Union of India, reported in AIR 1978 SC 597 and A.R. Antulay v. R.S. Nayak reported in AIR 1988 SC 1531.

In reply it has been submitted by Mr. Kamal Trivedi, learned advocate appearing for the respondent no.2 and Mr. M.R. Anand, Ld. PP with Mr. Maulin Raval, Ld. APP for the State of West Bengal and Mr. A.G. Uraizee, Ld. APP for the State of Gujarat that this Court will not exercise its writ jurisdiction under Art. 226 to quash the criminal proceedings pending before the Calcutta Court/police authorities at Calcutta, as it would be outside the territorial jurisdiction of this Court to do so. Reference in this connection has been made to the provision in Art. 226, which would read as under :-

"226.(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari, or any of them, [for the enforcement of any of the rights conferred by part III and for any other purpose].

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

xxx xxx xxx xxx xxx xxx"

The words 'every High Court' and the words 'throughout the territories in relation to which it exercises jurisdiction' appearing in the aforesaid provision have been emphasised. Referring to clause (2) of the aforesaid article, it has been submitted that the

criminal proceedings sought to be quashed have been initiated at Calcutta. The learned Chief Metropolitan Magistrate is stationed at Calcutta and the police authorities at Calcutta are the authorities under the State of West Bengal. No part of the criminal proceedings initiated at Calcutta could be said to have taken place in the State of Gujarat. Merely because it is asserted that search and seizure have been carried out at Ahmedabad, it cannot be said that any part of cause of action for said criminal proceedings had occurred at Ahmedabad. What is sought to be quashed is the process in the aforesaid criminal proceedings pending at Calcutta. In that view of the matter even clause (2) will not confer writ jurisdiction in this Court. In support of this submission, an unreported decision rendered by this Court (Coram : B.S. Kapadia, J. as he then was) on 1/8/1994 in Special Criminal Application No. 439 of 1992 has been relied upon. In that case the main prayer was for issuance of a writ in the nature of prohibition and/or certiorari and/or any other writ or direction and/or order to restrain the learned Magistrate from proceeding against the petitioners and also to quash the process issued by him (at Kozhikode) and also to quash the process issued by him in the criminal case in the S.T. Case No. 814/91 and/or to dismiss the complaint filed by the respondents against the petitioners there. Writ jurisdiction of this Court under Art. 226 of the Constitution of India was invoked in the said petition. This Court observed in para. 3 as under :-

"It is undisputed that Kozhikode is in Kerala State. So far as Art. 226(1) of the Constitution of India is concerned, this Court will have the jurisdiction to issue writs against the Government and/or the authorities situated within the territorial jurisdiction of this State. Clause (2) of Art. 226 provides that if a part of the cause of action has arisen within a State, in such circumstances, the Court of this State can issue the writ as if the cause of action has arisen within the State."

In that case the subject matter of the whole petition was the exercise of the powers by the learned CJM, Kozhikode of issuing the process in the aforesaid complaint. Therefore, there was no question of a part of the cause of action arising within the Gujarat State, and a part arising in Kerala State and, therefore, it was held that this Court would not have jurisdiction to issue any writ as prayed for.

It is no-doubt true that on behalf of the petitioner a decision of Punjab and Haryana High Court in the case of Kanwarjit Singh v/s. Union of India reported in 1994 (1) Crimes p.255 has been relied upon. The petitioner went before that Court in a petition under Art. 226 of the Constitution read with sec. 482 of the Code for issuance of writ of mandamus or any other appropriate writ or order or direction so as to quash the warrant of arrest issued by the Court of ACMM, New Delhi and the complaint pending in that Court u/S. 135(1)(b) of the Customs Act read with sec. 85 of the Gold (Control) Act, 1968 and to issue writ of prohibition from taking any action on the basis of the complaint. The Punjab and Haryana High Court, no-doubt granted prayer for issuance of such writ holding that wherever there is a genuine apprehension of the constitutional rights being violated, a citizen had a right to invoke writ jurisdiction of the High Court. It clearly appears that the question of territorial jurisdiction of the Punjab and Haryana High Court was not canvassed. The Court was required to proceed only on the basis of violation of Art. 21 of the Constitution making reference to a decision of the Apex Court in Special Reference No.1 of 1964 reported in (1965) 1 S.C.R. 492 and in the case of SMD Kiran Pasha v. The Government of Andhra Pradesh reported in JT 1989 (4) S.C. 366. Mr. Raju, learned advocate appearing for the petitioner specifically placed reliance upon what has been concluded by the Court in para. 15, which reads as under :-

"15. Since there is a manifest defect of jurisdiction in the Court of the ACMM, New Delhi to take cognizance of the offence committed at Kundli within the State of Haryana, the execution of the warrants against the petitioner will amount to interfering with his liberty otherwise than in due course of law. The respondents are, thus, restrained from giving effect to the warrants of arrest issued against the petitioner by the Court of ACMM, New Delhi and from arresting him and also from proceeding further with this complaint. This order shall, however, not debar the respondents from seeking legal remedies against the petitioner before the proper forum. With these directions, this petition stands disposed of."

Whereas the aforesaid order speaks for itself, with profound respect to the learned Judge of the P & H High Court it has to be said that when a pointed question has

been raised with regard to territorial jurisdiction of this Court, it can hardly be said that this Court can exercise it for quashing process of the Court at Calcutta. Even with regard to the police authorities at Calcutta the arguments based on clause (2) of Article 226 would not be of any assistance to the cause of the petitioner in as much as by virtue of the decision of this Court quoted above, it can hardly be said that any part of cause of action for this petition has arisen in the State of Gujarat in the facts of the case noted above. The grievance with regard to jurisdiction of the Calcutta Court and the grievance arising from the provisions of sec. 195 of the Code can well be made before any of the Courts including the High Court at Calcutta.

Reference has also been made on behalf of the respondents to a decision of the Allahabad High Court in the case of K.K. Bhargava v/s. Metropolitan Magistrate Bombay reported in 1986 Allahabad Law Journal 1093. The observations appearing at para. 10 need be quoted :-

"In the instant case, the only thing which could be submitted before us by the learned counsel for the petitioners was about the service of the notice of writ petition on them at Allahabad. Service of notice is not an integral part of the cause of action, inasmuch as for succeeding in the case, service of notice is not material. What is necessary to be established for obtaining the relief claimed in the writ petition was that the complaint filed against the petitioner was the abuse of the process of the Court, there being no case for calling upon the petitioners to answer the complaint. The complaint having been filed at Bombay, its quashing could be prayed by means of a writ petition in the Bombay High Court. Thus, the Metropolitan Magistrate being beyond our territorial jurisdiction, we have no power under Art. 226 of the Constitution to issue the writ."

Reference has also been made on behalf of both the parties to a decision of Apex Court in the case of Oil & Natural Gas Commission v. Utpal Kumar Basu (1994) 4 SCC 711 (supra), which refers to question of territorial jurisdiction under Art. 226 (2) of the Constitution of India. The facts pleaded in these petitions indicate only search and seizure carried out at Ahmedabad within the State of Gujarat and the petitioner

having been apprehended at Ahmedabad within the State of Gujarat with the assistance of the order obtained from the concerned Magistrate at Ahmedabad. However, no part of the complaint proceedings has taken place at Ahmedabad in the State of Gujarat. It has also been submitted on behalf of the respondents that if writ jurisdiction of this Court under Article 226 is exercised in the present petitions, it would tantamount to circumventing the supervisory jurisdiction of other High Court, in this case the Calcutta High Court, under Article 227 of the Constitution of India, which reads as under :-

"227.(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

- (a) call for returns from such courts;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein :

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

Here also the stress is on the words "every" and "territories". There is a great deal of substance in this submission. If the writ jurisdiction under Article 226 is exercised in these petitions it would certainly amount to circumventing the supervisory jurisdiction of the Calcutta High Court under Article 227 of the Constitution of India. In fact it would also amount to

bypassing the jurisdiction of the Calcutta High Court u/S. 482 of the Code and it can hardly be disputed that jurisdiction under this section, by virtue of definition of the High Court u/S. 2 (e) of the Code, would certainly be with the Calcutta High Court.

In the above view of the matter, both the petitions should fail. Rule in Special Criminal Application No. 533 of 1996 and Notice in Special Criminal Application No. 611 of 1996 shall, therefore, stand discharged. Interim relief vacated.

* * * * *

A request has been made on behalf of the petitioner that in order to enable the petitioner to carry the matter further interim relief might be extended. Having heard the learned advocate for the petitioner and learned P.P. and learned A.P.P. for the otherside, I find that there is no case for extension of interim relief. Even otherwise, according to the submissions made on behalf of the petitioner, the matters at Calcutta are due for further proceedings on 25/9/1996. In that view of the matter also there is no question of extending the interim relief.

* * *